

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL BLAZEVICH,

Defendant.

CASE NO. 99cr471-IEG

Order Modifying Prior Ruling;
Denying Defendant's Motion for
Production of Evidence [Doc. No.
375]; Denying Defendant's Motion to
Modify Minutes and for Transcript
[Doc. No. 384]

In his motion to modify the conditions of supervised release [Doc. No. 375], Defendant asked the Court to review, *in camera*, certain filmstrips. Based upon the Defendant's argument in his motion and at the time of the September 18, 2007 hearing, the Court believed Defendant was seeking new and different relief with regard to the photographs. Therefore, at the time of the hearing, the Court orally granted Defendant's request and required the government to produce the filmstrip for the Court's review.

The government's October 1, 2007 written response [Doc. No. 381] is essentially a motion for reconsideration. Defendant has filed an objection to the government's response and has also moved the Court to correct its September 18, 2007 minutes or alternatively for a transcript of the hearing. [Doc. No. 384]. Upon further review, the Court finds the relief Defendant sought in connection with his motion for modification of the terms of his supervised release is identical to the relief Defendant previously sought in his motion under 28 U.S.C. § 2255. Therefore, the Court reconsiders its September 18, 2007 oral ruling, modifies its order, and DENIES Defendant's

1 motion for production of the PTPO-H filmstrip for *in camera* review.

2 The government directs the Court's attention to its May 11, 2004 order, denying
 3 Defendant's motion under 28 U.S.C. 2255, which discusses Defendant's request for production of
 4 any pictures depicting PTPO-H's identification card. In that order, the Court found:

5 In response to the Court's order for the production of any pictures depicting PTPO-
 6 H's identification card, including the card itself, the government submitted the declarations
 7 of Special Agents James A. Sevel and Michael A. Foster of the United States Immigration
 8 and Customs Enforcement. Agent Sevel conducted the computer forensic analysis of
 9 digital media in petitioner's criminal investigation. . . . Agent Foster was the case agent in
 10 petitioner's criminal investigation and reviewed all the evidence in the case. . . . Both Sevel
 11 and Foster declared, under penalty of perjury, that they reviewed the Court's March 3, 2004
 12 order, and that they found no images depicting an identification card for the individual
 13 referred to as PTPO-H, including the identification card itself, among the evidence seized
 14 from petitioner's residence. . . .

15 Based on the information submitted by the government, including the declarations
 16 of Sevel and Foster, the Court finds that petitioner has failed to establish the prejudice
 17 necessary to state a claim for ineffective assistance of counsel regarding his attorney's
 18 investigation into PTPO-H's age. . . . Accordingly, for the reasons set forth above and in
 19 the Court's March 3, 2004 order, the Court finds it unnecessary to hold an evidentiary
 20 hearing on this issue.

21 [Doc. No. 234, pp. 3-4 (citations omitted).]

22 Defendant moved for reconsideration of the Court's May 11, 2004 order, and in its June 30,
 23 2004 order denying Defendant's motion, the Court elaborated on the reasons why it was not
 24 necessary to hold an evidentiary hearing to review the filmstrips and negatives:

25 In his present motion, petitioner argues that the only way the Court can determine
 26 whether the government possesses PTPO-H's identification card is to order production of
 27 all negatives and filmstrips depicting PTPO-H for *in camera* review.

28 Petitioner cites no legal authority for his contention that courts cannot resolve
 29 alleged Brady violations based solely on declarations submitted by the government.
 30 Moreover, the issue before the Court in its May 13, 2004 order was petitioner's claim for
 31 ineffective assistance of counsel and, as petitioner admitted in his motion for
 32 reconsideration, "a representation by the government that it does not possess exculpatory
 33 evidence may be sufficient for a court to resolve an ineffective assistance of counsel
 34 claim." . . . Regardless of whether the issue is framed as an alleged Brady violation or
 35 ineffective assistance of counsel claim, a court ruling on a habeas petition may resolve the
 36 issues before it by expanding the record and relying on documentary evidence, including
 37 affidavits. . . .

38 As discussed in the Court's May 13, 2004 order, Agent Michael A. Foster stated in
 39 his declaration that he reviewed "all of the evidence in this matter" and if that an
 40 identification card depicting PTPO-H was among any of the seized evidence, he "would
 41 have seen or reviewed it during the course of the investigation of this matter." . . . In
 42 addition, Agent James A. Sevel stated in his declaration that no photographs depicting an
 43 identification card for PTPO-H were observed during the forensic analysis of the digital
 44 media seized in this case. . . . The Court finds that these declarations provide sufficient

1 evidence for the Court to conclude that the government is not in possession of any
2 photographs depicting PTPO-H's state identification card. For the reasons stated above, the
Court denies defendant's motion for reconsideration.

3 [Doc. No. 239, pp. 2-3 (citations omitted).]

4 Defendant appealed the Court's denial of his motion under § 2255. The parties specifically
5 briefed the issue of the production of the PTPO-H filmstrip for appellate review. In its recent
6 order denying Defendant's appeal, the Ninth Circuit rejected Defendant's claim:

7 Blazevich next contends that the district court erred in denying, without an
8 evidentiary hearing, his claim that the government violated *Brady v. Maryland*, 373 U.S.
9 83 (1963). We reject this contention because a review of the record demonstrates that no
evidence supports Blazevich's claim that the government was withholding any exculpatory
evidence.

10 [Doc. No. 369, p. 3 (citation omitted).]

11 A district court may reconsider its prior rulings so long as it retains jurisdiction over the
12 case. United States v. Smith, 389 F.3d 944, 948 (9th Cir. 2004). Having once again reviewed
13 Defendant's motion for modification of the terms of his supervised release, it is apparent
14 Defendant seeks relief identical to the relief he previously requested and the Court denied. The
15 Court has squarely addressed and rejected Defendant's arguments regarding production of the
16 PTPO-H filmstrip. As a result, the Court hereby MODIFIES its September 18, 2007 oral ruling
17 and DENIES Defendant's motion for production of the filmstrip for *in camera* review [Doc. No.
18 375]. In addition, the Court DENIES Defendant's motion to correct the minutes or for a transcript
19 [Doc. No. 384]. The Court will not consider any further motions by Defendant relating to the
20 production of the PTPO-H filmstrip.

21 **IT IS SO ORDERED.**

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23 **DATED: October 16, 2007**

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25 
IRMA E. GONZALEZ, Chief Judge
United States District Court

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